IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 26TH NOVEMBER 2007 / 5TH AGRAHAYANA 1929

OP.No. 9633 of 2002(V)

PETITIONER:

M/S.KEEPADAS STEEL HOUSE, NEW BAZAR,
MUVATTUPUZHA, REPRESENTED BY ITS MANAGING PARTNER,
SRI.VARGHESE MATHEW.

BY ADV. SMT.S.K.DEVI

RESPONDENTS:
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1. THE SALES TAX OFFICER,
DEPT. OF COMMERCIAL TAXES, MUVATTUPUZHA.

2. STATE OF KERALA, REPRESENTED BY ITS
FINANCE SECRETARY,SECRETARIAT,THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SMT. SMITHA

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 26/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP 17133 OF 2002 IN OP 9633 OF 2002

DISMISSED

26.11.2007 SD/-C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE NOTICE NO. 2315 2723/98-99 DATED 23.12.2001 ISSUED BY THE FIRST RESPONDENT.

EXT.P2 TRUE COPY OF NOTICE NO. 2315 2723/99-2000 DATED 23.12.2001 ISSUED BY THE FIRST RESPONDENT.

EXT.P3 TRUE COPY OF ASSESSMENT ORDER NO.2315 2723/98-99 DATED 31.12.2001 ISSUED BY THE FIRST RESPONDENT.

EXT.P4 TRUE COPY OF ASSESSMENT ORDER NO.2315 2723/99-2000 DATED 31.12.2001 ISSUED BY THE FIRST RESPONDENT.

EXT.P5 TRUE COPY OF DEMAND NOTICE DATED 17.1.2002 ISSUED BY THE FIRST RESPONDENT.

EXT.P6 TRUE COPY OF DEMAND NOTICE DATED 17.1.2002 ISSUED BY THE FIRST RESPONDENT.

RESPONDENTS' EXHIBITS: NIL.

TRUE COPY

P.S. TO JUDGE.

C.N. RAMACHANDRAN NAIR, J.

O.P. NO. 9633 OF 2002

Dated this the 26th day of November, 2007

JUDGMENT

Petitioner is challenging Exts. P5 and P6 notices demanding interest under Section 23(3) read with Section 23(3A) of the KGST Act for the years 1998-99 and 1999-2000. According to the petitioner, interest is demanded on tax assessed on the turunover of sale of DEPB licences. Petitioner's case is that petitioner had not conceded transfer of value of DEPB as turnover. However, it is seen that petitioner has not contested the assessment. Counsel for the petitioner further pointed out that other dealers have contested the liability and the matter is pending before the Supreme Court. Petitioner wants to follow up the matter as and when Supreme Court decides the case, is the case of the petitioner. In any case, it is not proper or legal to issue demand notices without giving an opportunity to the petitioner to contest interest liability. In the circumstances, O.P. is disposed of directing the first respondent to treat Exts.P5 and P6 as notices proposing interest under relevant sections of the Act referred to above, give him an opportunity

to file objections, hear the petitioner and pass orders demanding interest, if permissible under the Act by giving reasons thereof, or otherwise drop the proceedings. First respondent is directed to complete the adjudication within a period of one months from the date of receipt of a copy of this judgment. Petitioner will produce a copy of this judgment and along with it file objections against Exts.P5 and P6 for the Officer to complete the adjudication as stated above. If petitioner has any grievance against the order to be passed by the Officer, petitioner can challenge the same before the statutory authority.

(C.N. RAMACHANDRAN NAIR)
Judge